

**COMPLAINT INVESTIGATION SUMMARY**

**COMPLAINT NUMBER:** 1577.00  
**COMPLAINT INVESTIGATOR:** Steve Starbuck  
**DATE OF COMPLAINT:** May 19, 2000  
**DATE OF REPORT:** June 29, 2000  
**REQUEST FOR RECONSIDERATION:** yes (revisions resulting from reconsideration are underscored)  
**DATE OF CLOSURE:** October 10, 2000

**COMPLAINT ISSUES:**

Whether the MSD of Martinsville Schools violated:

511 IAC 7-10-3 with regard to the school's alleged failure to conduct an educational evaluation and convene a case conference committee (CCC) meeting within forty instructional days of the date of the parent's written consent during the 1994-1995 school year.

511 IAC 7-12-2(c) with regard to the school's alleged failure to ensure the CCC considered a continuum of placement alternatives in determining the least restrictive environment for the student during the 1996-97 school year.

511 IAC 7-12-1 with regard to the school's alleged failure to implement the student's individualized education program (IEP), specifically:

- a. retaining the student in the sixth grade when the IEP stated the student would be placed in the seventh grade in the 1998-99 school year, and
- b. failing to reconvene the CCC prior to the second semester of the 1998-99 school year to review the appropriateness of the placement.

511 IAC 7-10-3(l) with regard to the school's alleged failure to ensure the CCC considered the results of an independent evaluation obtained by the parent during the 1998-99 school year.

511 IAC 7-15-2 with regard to the school's alleged failure to follow appropriate procedures when expelling a student with a disability for the 1998-99 school year.

511 IAC 7-12-3(a) with regard to the school's alleged failure to include in the CCC Summary Report , the reason the student is not attending school, other options tried or considered, and the reason those options were rejected for the 1999-2000 school year.

511 IAC 7-12-3(b) with regard to the school's alleged failure to convene the CCC meeting to review the student's IEP at least every sixty instructional days from the date the student was placed on homebound instruction.

511 IAC 7-3-23 with regard to the school's alleged failure to provide a free appropriate public education to a student with a disability during the 1999-2000 school year.

511 IAC 7-8-1 with regard to the school's alleged failure to maintain confidentiality of personally identifiable information about a student with a disability.

During the course of the investigation, additional issues were identified, which are:

34 CFR 300.344(a)(2) with regard to the school's alleged failure to include at least one general education teacher in the CCC meeting.

511 IAC 7-12-1(k)(4) with regard to the school's alleged failure to specify in the IEP the length and frequency of special education services.

The complaint report was originally due on June 16, 2000, however, due to the need to obtain additional information from the school an extension was approved by the state director of special education extending the deadline until June 30, 2000.

#### **FINDINGS OF FACT:**

1. The student is fourteen years old and will be attending the ninth grade this fall. The student has been determined eligible for special education under the disability category of other health impairment.
2. The parent signed a Parent Permission for Evaluation form on November 3, 1994. The school conducted a psycho-educational evaluation on December 13, 1994. On January 6, 1995, the parent met with the school psychologist, and it was decided that a CCC meeting would be postponed until the results of an independent evaluation were obtained. The independent evaluation was conducted on January 24, 1995, and a CCC meeting was convened on February 15, 2000, to determine the student's eligibility for special education. The director did not provide a 1994-1995 school calendar to document that the time period between November 3, 1994, and January 6, 1995, did not exceed 40 instructional days.
3. A CCC meeting was convened for the student on September 17, 1996. At this time, the school utilized a Case Conference/Annual Case Review Report form that did not include a checklist of all least restrictive environment options available to a special education student. However, on Form C, page 3 of 3, it states: "Based on progress since third grade - student continues to benefit from status quo level of OHI consultation of resource teacher." More direct services not needed as consult remains appropriate. Form I, page 2 of 3, states the student will participate in a general education curriculum, including non-academic areas such as art, music, and regular physical education. The parent signed and dated the IEP indicating her agreement with the recommendations made at the CCC meeting.
4. According to the director, the student was never retained during the three years he attended middle school. None of the CCC Summaries from 1997-2000 indicates that the Student was being retained. However, other documentation does not support the school's representation that the Student was in the 6<sup>th</sup> grade during the 1997-1998 school year, 7<sup>th</sup> grade during the 1998-1999 school year, and 8<sup>th</sup> grade during the 1999-2000 school year. The CCC report of March 5, 1998 lists the Student as being in the 6<sup>th</sup> grade during the 1997-1998 school year. A report card dated March 13, 1998 indicates the Student is in the 6<sup>th</sup> grade. IEPs from August and November, 1998 indicate that the Student was in the 7<sup>th</sup> grade during the 1998-1999 school year. The August 1998 IEP states that the Student will participate in the 6<sup>th</sup> grade curriculum and that the CCC will reconvene prior to the second semester to discuss "6<sup>th</sup> or 7<sup>th</sup> grade options for second semester." However, three discipline referrals for the 1998-1999 school year identify the Student as being in the 6<sup>th</sup> grade. The CCC Summary dated January 20, 2000, lists the Student's grade as 7<sup>th</sup>, but the CCC Summary dated two months later, lists the Student's grade level as 9<sup>th</sup>. Two report cards and discipline referrals from the 1999-2000 school year identify the Student as being in the 7<sup>th</sup> grade.

5. The IEP dated August 21, 1998, states a CCC meeting shall be reconvened before the second semester to discuss 6<sup>th</sup> or 7<sup>th</sup> grade options. Subsequent to this CCC meeting circumstances regarding the student's behavior changed significantly. A causal CCC meeting was convened on September 21, 1998, where it was determined a relationship between the student's behavior and his disability did not exist. Another CCC meeting was convened on November 6, 1998, where it was determined due to behavior problems, homebound instruction would be the least restrictive environment for the student. Although subsequent IEPs do not specifically address 6<sup>th</sup> or 7<sup>th</sup> grade options, the IEPs do list specific educational goals and objectives and address the least restrictive educational environment for the student. During this time period, the student was not retained. The parent attended each CCC meeting and signed the IEPs indicating her agreement with the recommendations made and giving consent for the IEPs to be implemented.
6. An independent psychiatric evaluation for the student was conducted on June 22, 1998. The director states the evaluation was not available to the school to discuss at a CCC meeting until the CCC meeting that was convened on June 7, 1999. The behavior plan approved on this date references the student's behavior and medical condition as reported in the independent evaluation.
7. According to the director and the 1998-1999 attendance records, the student was not expelled during the 1998-1999 school year. On September 21, 1998 a CCC was convened to determine if the Student's misconduct was caused by the Student's disability. The CCC determined no causal relationship existed and developed a behavior plan for the Student. The CCC agreed that if the Student was involved in behavior specified in the behavior plan that "was not causally related to the Other Health Impairment, [the] Student will be removed to homebound instruction for 8-12 hours/week." On October 28, 1998, a written charge and request for expulsion was filed regarding the student's misconduct on October 27, 1998. A CCC was convened on November 6, 1998 to review the Student's IEP. The November 6<sup>th</sup> *Case Conference Summary/IEP cover page* states "Causal established 9-21-98." On page 3 of the CCC Summary, it states: "Student pending expulsion; current behaviors are not related to the student's Other Health Impairment... Student needs to continue his education if expelled or if diverted by expulsion waiver." It further states that "[the] Causal established 9-21-98 [is] still relevant. . . [and] that the Student would receive homebound services as a diversion to expulsion." No separate causal relationship determination was made subsequent to the alleged misconduct that occurred on October 27, 1998. Despite the statements on the CCC Summary, the local school superintendent issued a *Notice of Superintendent's Determination* on November 13, 1998, stating that the Student violated the School's Conduct Code and that the Student was expelled from School until August 17, 1999. No documentation was submitted indicating that the November 13 expulsion determination had been rescinded or otherwise waived. The Student began receiving homebound instruction on November 11, 1998.
8. Page 8 of the IEP written on November 6, 1998, states special education instruction for most of the instructional day, with instruction in the general classroom for part of the day, is not a restrictive enough environment for the student to benefit from his educational program. It is noted the student will go on a homebound program as a diversion to expulsion and will continue to receive counseling and day treatment services. The IEP does not explain why the student cannot attend school or what other options other than homebound instruction have been tried or considered. In addition, it is not recorded in the IEP the reason least restrictive environments other than homebound instruction were rejected.
9. The student began homebound instruction on or about November 11, 1998, and continued with this program through the duration of the 1998-1999 school year. A CCC meeting was not convened at least every sixty instructional days to review the student's IEP as required for students with

disabilities on homebound instruction.

10. IEPs for the 1999-2000 school year were written on June 7, 1999, and on January 20, 2000. Both IEPs state the student will receive general education instruction for most of the instructional day, with special education instruction or related services provided in a resource room for part of the school day. Although the student was frequently absent from school, the services mentioned above were provided to the student for the 1999-2000 school year. The parent was informed of her due process and procedural rights on these dates. The parent attended the CCC meetings and signed the IEPs indicating her agreement with the recommendations made and giving consent for the IEPs to be implemented.
11. The director states that school district personnel did not violate confidentiality provisions of personally identifiable information concerning a student with a disability. The director states the allegation of the attendance officer verbally giving confidential information to a school administrator regarding a pending charge against the parent and student is false. The attendance officer states on May 10, 2000, she did share information regarding a pending charge against the parent with a school administrator at the high school; however, since this is a case involving an adult, the information is a matter of public record. The attendance officer did not discuss charges regarding the student with the high school administrator. The director states the special services office did not share any confidential information with the attendance officer other than that specifically related to the student's attendance and in accordance with the requirements of 511 IAC 7-8-1.
12. According to the IEPs written on June 7, 1999, January 20, 2000, and March 23, 2000, a general education teacher was not in attendance at these three CCC meetings.
13. The IEP dated June 7, 1999, states the student will receive psychological counseling 6 to 8 sessions for approximately one hour during the summer. The IEP dated March 23, 2000, states the student is eligible for an extended school year program and will receive 12 to 16 hours per week of homebound instruction during the summer months, and during the 2000-2001 school year he will receive counseling as needed, and may utilize the resource room on an as needed basis.

#### **CONCLUSIONS:**

1. Finding of Fact #2 reflects that the director did not provide documentation that the school and the parent agreed to postpone the CCC meeting within 40 instructional days from the date that the parent provided written consent to the school for an educational evaluation. Therefore, a violation of 511 IAC 7-10-3 is found.
2. Finding of Fact #3 indicates the CCC considered a continuum of placement alternatives in determining the least restrictive environment for the student at the CCC meeting convened on September 17, 1996. Therefore, no violation of 511 IAC 7-12-2(c) is found.
3. Finding of Fact #4 reflects that the Student was considered either a 6<sup>th</sup> or 7<sup>th</sup> grader during the three school years from 1997 to 2000. The contradictory information precludes a formal determination of the Student's actual grade level during the 1998-1999 school year. However, two grade levels in three years indicates that, at some point, the Student repeated all or part of a grade. Although the CCC Summary/IEP identifies the Student as a 7<sup>th</sup> grader during the 1998-1999 school year, other school records identify the student as being in the 6<sup>th</sup> grade. Therefore, a violation of 511 IAC 7-12-1 is found with respect to the 1998-1999 school year.
4. Finding of Fact #5 indicates issues mentioned in an IEP to be discuss at a future CCC meeting were no longer relevant due to changes in the student's behavior and his instructional environment.

Therefore, no violation of 511 IAC 7-12-1 item (b) is found.

5. Finding of Fact #6 reflects the results of an independent evaluation were considered at a CCC meeting convened on June 7, 1999. Therefore, no violation of 511 IAC 7-10-3(l) is found.
6. Finding of Fact #7 reflects contradictory information on whether the Student was expelled during the 1998-1999 school year. The CCC Summary/IEP completed subsequent to the date the *Written Charge and Request for Expulsion* was filed states the Student is being diverted from expulsion. The CCC determined no causal relationship based on a previous determination and a behavior plan from September 21, 1998 identifying the particular misconduct as not being caused by the Student's disability. A week after the CCC convened, the local superintendent issued a determination that the Student was expelled for the remainder of the 1998-1999 school year. Although appropriate procedures were followed for expulsion of a student with a disability, there is confusion about whether the Student was formally expelled or if the Student was diverted from expulsion. The School continued to provide special education services to the Student via homebound instruction. No violation of 511 IAC 7-15-2 is found.
7. Finding of Fact #8 reflects the IEP of November 6, 1998, did not address the reason the student is not attending school, other options tried or considered, and the reason those options were rejected for the 1999-2000 school year. Therefore, a violation of 511 IAC 7-12-3(a) is found.
8. Finding of Fact #9 indicates the school failed to convene the CCC meeting to review the student's IEP at least every sixty instructional days from the date the student was placed on homebound instruction. Therefore, a violation of 511 IAC 7-12-3(b) is found.
9. Finding of Fact #10 reflects that the school provided the student with a free appropriate public education during the 1999-2000 school year. Therefore, no violation of 511 IAC 7-3-23 is found.
10. Finding of Fact #11 indicates that the school did maintain confidentiality of personally identifiable information about a student with a disability. Therefore, no violation of 511 IAC 7-8-1 is found.
11. Finding of Fact #12 reflects that a general education teacher was not included at the student's last three CCC meetings. Therefore, a violation of 34 CFR 300.344(a)(2) is found.
12. Finding of Fact #13 indicates that both the length and frequency of special education services are given in a range without a means for determination of the amount of needed services or documentation that the student requires services to be delivered in such a manner. Therefore, a violation of 511 IAC 7-12-1(k)(4) is found.

**The Department of Education, Division of Special Education, requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

The MSD of Martinsville Schools shall:

1. In-service all appropriate personnel as to the requirements as specified in 511 IAC 7-27-3(a)(3), 511 IAC 7-25-4, 511 IAC 7-27-10, and 511 IAC 7-27-6(a)(5).

The above mentioned in-service training may be incorporated with the training required for complaint #1553.00 as addressed in your letter to the Division of May 16, 2000. The in-service training for 511 IAC 7-27-6(a)(5) shall include reference to the memorandum dated February 10, 2000, to special

education directors from the state director of special education regarding the recording of length and frequency of services in IEPs. Submit documentation to the Division that all in-service training has been completed no later than September 8, 2000. The documentation should include a list or an agenda of all issues discussed, any handouts that were distributed, and a list of attendees by name and title.

2. Convene a CCC meeting to correct the wording in the IEP dated March 23, 2000, concerning the services of the resource room, counseling, and homebound instruction. The revised IEP will need to be specific as to length and frequency of services (e.g., one time per week for thirty minutes). The length and frequency should not be listed as a "range" unless the CCC determines the student has unique needs that require services to be delivered in such a manner. Should this determination be made, the revised IEP will need to reflect this reason and how the amount of services will be determined. The correct grade placement for the Student must also be discussed by the CCC and included in the revised IEP. Submit the revised IEP and CCC Summary Report to the Division no later than September 8, 2000.
3. Submit a letter of assurance to the Division no later than August 14, 2000, stating that the school corporation will provide a general education teacher at all future CCC meetings, if the student is or may be participating in the general education environment.